

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
WAIKOLOA SANITARY SEWER COMPANY, )  
INC., dba WEST HAWAII SEWER COMPANY) )  
For Approval of Amended )  
Contribution-in-aid-of-Construction) )  
Fee. Transmittal No. 06-01. )

DOCKET NO. 2006-0090

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

2008 DEC 23 A 10:11

FILED

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DECISION AND ORDER

<sup>1</sup>The commission recently issued its Decision and Order in In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Docket No. 05-0329 ("Docket No. 05-0329"), WHSC's 2006 test year rate case. Similar to Docket No. 05-0329, WHSC and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party in all commission proceedings, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a), are parties in this docket. Intervenor WAIKOLOA MAUKA, LLC is also a party to this docket. WHSC does not anticipate expanding its wastewater treatment plant facilities during the 2006 test year. See Docket No. 05-0329, WHSC's Exhibit 7, at 3 - 4.

I.

Background

A.

Waikoloa, Island of Hawaii

The Waikoloa community in the South Kohala area on the island of Hawaii consists of two utility service areas: (1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) West Hawaii Water Company ("WHWC") provides water utility service; and (2) WHSC provides wastewater utility service. Within the Waikoloa Beach Resort, West Hawaii Utility Company ("WHUC") provides water and wastewater utility services.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership. On August 20, 2008, the commission approved, subject to certain conditions, the sale of WHSC, WHUC, and WHWC's stock to Hawaii Water Service Company, Inc., a Maui-based public utility and a wholly-owned subsidiary of California Water Service Group.<sup>2</sup>

WHSC is a public utility that owns, administers, and operates a wastewater collection and treatment system that serves residential, multi-family, commercial, and other customers in the greater Waikoloa Village area on the island of Hawaii. WHSC operates two wastewater treatment plant facilities.

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<sup>2</sup>See In re Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co., Inc., Waikoloa Resort Util., Inc., and Hawaii Water Serv. Co., Inc., Docket No. 2008-0018, Decision and Order, filed on August 20, 2008.

The northern service area is served by the Kamakoa Water Reclamation Plant ("K-Plant"), while the southern service area is served by the Auwaiakeakua Water Reclamation Plant ("A-Plant").

The K-Plant has an average dry weather flow capacity of 600,000 gallons per day ("gpd"),<sup>3</sup> while the A-Plant has an average dry weather flow capacity of 300,000 gpd.<sup>4</sup>

B.

CIAC

As a condition to receiving service or substantially increasing sewage outflow volume from new or substantially modified facilities, developers and commercial applicants must pay a non-refundable CIAC to WHSC. WHSC Rule XI(1). WHSC utilizes CIAC funds for the purpose of expanding the capacity of its infrastructure. WHSC Rule XI(2). The CIAC fee required by WHSC as a condition of receiving service to a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. WHSC Rule XI(5).

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<sup>3</sup>WHSC's Exhibit CA-IR-15(b), at 6 and 84. The State of Hawaii ("State") Department of Health rates the capacity of the K-Plant lagoon at 37,000 gpd, and has rated the operation of the K-Plant as acceptable. WHSC's response to CA-IR-11; WHSC's Exhibit CA-IR-11; WHSC's Exhibit CA-IR-14-a; and WHSC's response to CA-SIR-23(a). The existing K-Plant lagoon was designed as a temporary treatment facility until a permanent plant is built. WHSC's response to CA-SIR-23(b).

<sup>4</sup>Docket No. 05-0329, WHSC's Exhibit 1, at 1, and WHSC's Exhibit 8, at 7; and Docket No. 2006-0090, WHSC's responses to CA-IR-9(a) and CA-IR-10(a), WHSC's Exhibit CA-IR-10(a)(1), and WHSC's Exhibit CA-IR-15(b), at 6 and 84.

The CIAC fee assessed by WHSC is calculated on the basis of the wastewater utility's estimate of: (1) the outflow from the customer's premises in the case of new facilities; or (2) the increase in outflow from the customer's premises in the case of substantially modified facilities. WHSC Rule XI(7). Presently, the CIAC assessed by WHSC is \$7.25 per gallon of estimated annual average daily sewage discharge ("EDSD"). WHSC Rule XI(6).

The CIAC for new facilities shall be estimated at the time that an applicant makes a request to the wastewater utility for a will serve letter. A subsequently issued will serve letter will guarantee only the wastewater utility's ability and willingness to supply the applicant with the requested service. The total CIAC fee to be paid by the applicant is dependent upon the rate provided for in WHSC's tariff rules in effect at the time that final payment is tendered.<sup>5</sup> WHSC Rule XI(9). Any will serve letter issued by WHSC is not binding until payment is received. WHSC Rule XI(9).

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<sup>5</sup>CIAC shall be payable: (1) fifty percent within ninety days of issuance of a will serve letter by WHSC to the applicant; and (2) the remainder of the total CIAC, calculated at the then-current rate provided for in WHSC's tariff rules, is due upon the issuance of a building permit, or in the case of a single-family subdivision, upon issuance of the final subdivision approval, whichever comes first. WHSC Rule XI(9).

C.

Waikoloa Mauka, LLC

WAIKOLOA MAUKA, LLC ("Waikoloa Mauka") is a Delaware limited liability company authorized to conduct business in the State. On September 20, 2005, Waikoloa Mauka purchased and acquired from WDC and WLCC approximately 14,000 acres of unimproved land at Waikoloa for \$60 million (the "unimproved land"). Some of the unimproved land purchased by Waikoloa Mauka is situated within WHSC's service area.

In addition to the \$60 million purchase price, Waikoloa Mauka states that: (1) it has expended and will continue to expend considerable sums of money in connection with the development of the unimproved land; and (2) the development of the unimproved land located within WHSC's service area will be subject to the payment of CIAC fees to WHSC.

D.

Procedural Background

On March 21, 2006, WHSC filed Transmittal No. 06-01, seeking to amend its CIAC tariff rule.<sup>6</sup> Specifically, WHSC proposes to increase the CIAC fee from the current \$7.25 per gallon of EDSD, to \$32.39 per gallon of EDSD. WHSC filed its transmittal in accordance with HRS §§ 269-12(b) and 269-16(b) and HAR § 6-61-111.

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<sup>6</sup>WHSC's Transmittal No. 06-01; Exhibits 1 - 11; and Certificate of Service, filed on March 21, 2006 ("Transmittal No. 06-01"). WHSC served copies of Transmittal No. 06-01 upon the Consumer Advocate.

On April 3, 2006, the Consumer Advocate filed its Protest, recommending that the commission suspend Transmittal No. 06-01 and hold a public hearing, pursuant to HRS § 269-16(b), for the proposed increase in WHSC's CIAC fee.<sup>7</sup> The Consumer Advocate disagreed with WHSC's assessment that the proposed amended CIAC fee does not involve a rate increase to existing customers.<sup>8</sup> On April 5, 2006, Waikoloa Mauka filed its Protest, recommending that the commission suspend and investigate Transmittal No. 06-01.<sup>9</sup> On April 12 and 13, 2006, WHSC filed its respective responses to the Protests, urging the commission to allow Transmittal No. 06-01 to take effect, as proposed.<sup>10</sup>

On April 17, 2006, the commission suspended Transmittal No. 06-01 and opened an investigation to examine the merits of WHSC's transmittal.<sup>11</sup> On May 5, 2006, Waikoloa Mauka filed a timely Motion to Intervene, pursuant to HAR §§ 6-61-41

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<sup>7</sup>Consumer Advocate's Protest; and Certificate of Service, filed on April 3, 2006 (collectively, "Consumer Advocate's Protest").

<sup>8</sup>As asserted by WHSC in its transmittal, "[a]dopting this amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b)." WHSC's Transmittal No. 06-01, at 6, ¶ 15.

<sup>9</sup>Waikoloa Mauka's Protest of Transmittal No. 06-01; and Certificate of Service, filed on April 5, 2006 (collectively, "Waikoloa Mauka's Protest").

<sup>10</sup>WHSC's Memorandum in Opposition to the Consumer Advocate's Protest, and Certificate of Service, filed on April 12, 2006; and WHSC's Reply to WHSC's Protest, and Certificate of Service, filed on April 13, 2006.

<sup>11</sup>Order No. 22392, filed on April 17, 2006. Interested persons were allowed to file a timely motion to intervene or participate within twenty days from the date of the Order, pursuant to HAR § 6-61-57(3)(B).

and 6-61-55.<sup>12</sup> On May 10, 2006, WHSC filed its Opposition to Waikoloa Mauka's Motion to Intervene.<sup>13</sup>

On May 18, 2006, the commission: (1) held that a public hearing was not required under HRS § 269-16(b) and the facts and circumstances of this case; (2) granted Waikoloa Mauka's Motion to Intervene; and (3) instructed the Parties to submit a stipulated procedural schedule for the commission's review and consideration.<sup>14</sup>

On June 19, 2006, the commission issued Stipulated Procedural Order No. 22539, which adopted the Parties' proposed stipulated procedural order, without change. Thereafter, the Parties engaged in discovery, with WHSC filing its responses to information requests issued by the Consumer Advocate and Waikoloa Mauka, respectively.

On August 25, 2006, the Consumer Advocate and Waikoloa Mauka filed their respective Statements of Position.<sup>15</sup>

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<sup>12</sup>Waikoloa Mauka's Motion to Intervene; Affidavit of Kevin C. Kellow; and Certificate of Service, filed on May 5, 2006 (collectively, "Motion to Intervene").

<sup>13</sup>WHSC's Opposition to Waikoloa Mauka's Motion to Intervene; Exhibit A; and Certificate of Service, filed on May 10, 2006 (collectively, "Opposition").

<sup>14</sup>Order No. 22474, filed on May 18, 2006.

<sup>15</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on August 25, 2006 (collectively, "Consumer Advocate's Statement of Position"); and Waikoloa Mauka's Position Statement; Exhibit A; and Certificate of Service, filed on August 25, 2006, as supplemented on August 28, 2006 (collectively, "Waikoloa Mauka's Statement of Position").



On September 8, 2006, WHSC filed its Statement of Position.<sup>16</sup>  
No evidentiary hearing is requested by the Parties.<sup>17</sup>

E.

WHSC's Methodology

WHSC's present CIAC fee of \$7.25 per gallon of EDSD consists of the following components:

Construction costs	\$6.23
Financing	<u>\$1.02</u>
	\$7.25

WHSC seeks to increase its CIAC fee to \$32.39 per gallon of EDSD, consisting of the following components:

Construction costs	\$29.26
Financing	<u>\$3.13</u>
	\$32.39

Though not explained by WHSC, the methodology utilized by WHSC in calculating the proposed increase in its CIAC fee to \$32.39 per gallon of EDSD is generally as follows:<sup>18</sup>

1. WHSC calculated the projected demand for wastewater services during the years 2006 through 2012 as 0.47 million gallons per day ("mgd") for the A-Plant, and 0.37 mgd for the K-Plant (WHSC's Exhibit 2). The projected

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<sup>16</sup>WHSC's Statement of Position; Declaration of Richard Terminello; Exhibits 12 - 17; and Certificate of Service, filed on September 8, 2006 (collectively, "WHSC's Statement of Position").

<sup>17</sup>See Commission's letter, dated November 6, 2006; WHSC's letter, dated November 9, 2006; Waikoloa Mauka's letter, dated November 15, 2006; and Consumer Advocate's letter, dated November 16, 2006.

<sup>18</sup>See WHSC's Transmittal, at 5, ¶ 14, and Exhibits attached thereto; and Consumer Advocate's Statement of Position, at 5-7.

demand is based on the projected wastewater flows from new residential (single-family and multi-family units) and commercial developments that are anticipated to be constructed during the years 2006 through 2012 (WHSC's Exhibits 1 and 2).

2. The projected new residential units consist of 2,652 units (WHSC's Exhibits 1 and 2), as follows:

<u>A-Plant Service Area</u>	<u>No. of Units</u>
Castle and Cooke development units	
Single-family	473
Multi-family	279
Mauka Lands development units	
Multi-family	425
Sub-total	1,177
 <u>K-Plant Service Area</u>	
Waikoloa Village development units (County of Hawaii)	
Single-family	450
Multi-family	750
Waikoloa Heights development units	
Multi-family	275
Sub-total	<u>1,475</u>
Total	2,652

WHSC projected the new residential demand by multiplying the projected number of development units by a sewage flow factor per single-family or multi-family development unit.<sup>19</sup>

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<sup>19</sup>The sewage flow factors per single-family or multi-family development unit are set forth in WHSC's Rule XI(8)(a), as follows: (1) single-family residential unit, 320 gpd; and (2) multi-family residential unit, 220 gpd. See also WHSC's response to CA-IR-1. For the A-Plant: (1) 473 single-family units x 320 gpd = 0.15 mgd; and (2) 704 multi-family units x 220 gpd = 0.15 mgd. For the K-Plant: (1) 450 single-family units x 320 gpd = 0.14 mgd; and (2) 1,025 multi-family units x 220 gpd = 0.23 mgd. See WHSC's Exhibit 2. Thus: (1) for new residential single-family units (A-Plant and K-Plant), 0.15 mgd + 0.14 mgd = 0.30 mgd (rounded); and (2) for new multi-family residential units

3. WHSC then projected the new commercial developments for the A-Plant by first estimating the water use for the commercial developments (0.21 mgd), then applying an eighty percent factor to the estimated water use to obtain the projected wastewater flow.<sup>20</sup> Thus, under WHSC's calculations, the total projected wastewater demand is 0.84 mgd:

<u>Type</u>	<u>A-Plant</u> (mgd)	<u>K-Plant</u> (mgd)
Single-family	0.15	0.14
Multi-family	0.15	0.23
Commercial	<u>0.17</u>	<u>-</u>
Total	0.47	0.37 <sup>21</sup> = 0.84 mgd

See WHSC's Exhibit 2.

4. WHSC estimated the construction costs for the years 2006 through 2012 at \$22,592,000 (2006\$) (WHSC's Exhibit 5), then included annual escalations, for a total construction cost of \$24,673,000 (WHSC's Exhibit 5). In addition, WHSC estimated the net financing charge at \$2,645,000 (see WHSC's Exhibit 6). Thus, "[t]he projected costs to supply

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(A-Plant and K-Plant), 0.15 mgd + 0.23 mgd = 0.38 mgd. See WHSC's Exhibit 2.

<sup>20</sup>0.21 mgd commercial water use x .80 = .17 mgd. See WHSC's response to CA-IR-2. "Mauka commercial use in the WHWC Village A Plant service area is based on 952,000 [square feet ('sf')] of commercial area, and 1,012,203 sf of landscaped area. The water use is 220 gpd per 1,000 SF of interior commercial use area." WHSC's Exhibit 2, footnote a; see also WHSC's response to CA-IR-2; and WHSC's Exhibit CA-IR-2-b-3.

<sup>21</sup>See WHSC's response to CA-SIR-5(a).

the necessary capacity for the anticipated new development through to 2012 are approximately \$27,318,000 (including construction costs of approximately \$24,673,000 and net financing charges of \$2,645,000)."<sup>22</sup>

5. The estimated construction cost of \$22,592,000 (2006\$) consists of: (1) construction costs derived from a unit construction cost of \$15 gpd; (2) engineering design, bid review, and construction management costs, based on an actual bid from Brown and Caldwell for the A-Plant engineering design, bidding, and construction services; (3) permitting and R-1 certification costs, comprising one percent of the construction costs; and (4) change order costs, comprising ten percent of the construction costs.<sup>23</sup>

Specifically:

<u>Plant</u>	<u>Unit Construction Cost (\$/gpd)</u>	<u>Capacity Built (mgd)</u>	<u>Item 1 (Above)</u>	<u>Item 2 (Above)</u>	<u>Item 3 (Above)</u>	<u>Item 4 (Above)</u>	<u>Total Project Cost (2006\$)</u>
A-Plant	\$15	0.80	\$12,000,000	\$1,560,000	\$120,000	\$1,200,000	\$14,880,000
K-Plant	\$15	0.37	\$5,550,000	\$1,560,000	\$55,500	\$550,000	\$7,720,500

WHSC's Exhibit 5; and WHSC's Exhibit WML-IR-6(a)(i) and (ii).

6. WHSC states that the unit construction cost of \$15 gpd is based on the Preliminary Engineering Report for the A-Plant, dated September 2005, prepared by Brown and Caldwell for WHSC (the "A-Plant Report").<sup>24</sup> As WHSC explains:

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<sup>22</sup>WHSC's Transmittal No. 06-01, at 4.

<sup>23</sup>WHSC's Exhibit 5; WHSC's response to WML-IR-6(a)(i) and (ii); WHSC's Exhibit WML-IR-6-(a)(i) and (ii); WHSC's response to CA-SIR-6(a); and WHSC's Exhibit CA-SIR-17.

<sup>24</sup>WHSC's Exhibits CA-IR-15(b) and CA-SIR-2(a). The construction costs for the A-Plant and K-Plant are based on the

The unit project cost of \$15.00/gpd is a general engineering estimate of gross construction costs (please see response to WML-IR-6-d). It does not include construction contingency costs, design costs, engineering construction services costs, permits or change orders. It was used as a starting point for estimating the cost of the A-Plant expansion. Added to this were the engineering costs, permitting and change orders. The total unit project cost \$18.60 per the application and \$18.69 per the [A-Plant Report]. Both estimates support a project cost of approximately \$15,000,000. WHSC compared these estimates with unit construction costs for an activated sludge wastewater facility in Chula Vista, California. Unit costs for a 5,000,000 gpd facility ranged from \$17.29 to \$20.10 per gallon. Unit costs for a 10,000,000 gpd facility ranged from \$13.39 to \$14.62 per gallon. The \$15 per gallon unit construction utilized in the instant docket is well within [the] range of unit construction costs listed above.

WHSC's response to CA-SIR-6(a); see also WHSC's Exhibits CA-IR-15(b) and CA-SIR-2(a).

7. By contrast, the preliminary engineering report for the K-Plant has not been completed. In this regard, WHSC explains:

The K-Plant replacement process will not be known definitely until the preliminary engineering report is completed. However, [a moving bed bio-reactor] system has been under consideration with a preliminary, basic estimated cost of approximately \$6,000,000. Other alternatives will be evaluated.

WHSC's response to CA-IR-15(b).

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unit construction cost of \$15 gpd multiplied by the capacity being built:

A-Plant: \$15/gpd x 0.80 mgd = \$12,000,000

K-Plant: \$15/gpd x 0.37 mgd = \$5,550,000

The \$6,000,000 estimate for the K-Plant is based on the year 2012 estimated increased flow of 370,000 gpd in the application and the estimated \$15/gpd unit construction cost. As set forth in the response to CA-SIR-6-a, that \$15 gpd cost estimate is reasonable based on the study conducted by [WHSC's] expert and other sewage treatment plant construction costs.

WHSC's response to CA-SIR-10(b).

The K-Plant is very close to its existing treatment capacity and is being carefully operated and monitored until the facility can be expanded to accommodate additional customer connections. Under these conditions, [WHSC] does not anticipate sewage overflows at the facility.

WHSC's response to CA-SIR-23(c).

8. With respect to the annual escalations,

WHSC states:

Annual projected escalations are based on 10 percent in 2006, with 4 percent annual escalation thereafter. Any expansion of the main lines will be paid for directly by [the] developers.

WHSC's Exhibit 5, footnote a.

The short term 10% increase factor is based on management's assessment of the impact of the sharp increases in fuel costs on construction costs in the near future. The projected increases in future years [are] consistent with the 2 to 6% increases in the annual construction cost index experienced in prior years.

WHSC's response to CA-IR-15(d).

9. WHSC divided the total estimated construction cost of \$24,673,000 by the total projected wastewater demand of 0.84 mgd (0.47 + 0.37) to calculate the CIAC fee of \$29.26 per EDSD (rounded downward) for the construction component (WHSC's Exhibit 3).

10. WHSC divided the net financing charge of \$2,645,000 (see WHSC's Exhibit 6) by the total projected wastewater demand of 0.84 mgd to calculate the financing component of \$3.13 per EDSD.

F.

WHSC's Position

WHSC's position is set forth in its transmittal and other filings, including its responses to information requests. WHSC states:

1. Due to rapidly expanding development in the Waikoloa Village area, significant new demands will be made upon WHSC's system in the near future. Thus, an increase in the CIAC fee is necessary to fund new and expanded sewage treatment plant facilities.

2. The data and projections used by WHSC in calculating the proposed increase in the CIAC fee to \$32.39 per gallon of EDSD are attached as exhibits to WHSC's transmittal. WHSC estimates that: (A) from 2005 to 2012, 2,652 new residential dwelling units and new commercial facilities within the Waikoloa Village area will require wastewater discharge service from WHSC; and (B) by 2012, the projected wastewater discharge will increase by 0.84 mgd, including 0.17 mgd in new commercial wastewater discharge.

3. WHSC's current facilities are unable to meet such demands, and WHSC must expand its sewer treatment plants in order to provide the necessary service. Sewage flows are expected to

exceed WHSC's present plant capacity by December 2007. Meeting the increased demand will require the expansion of the A-Plant and the replacement of the K-Plant.

4. WHSC plans to conduct a competitive bidding process to select contractors and procure the necessary materials to expand its facilities.<sup>25</sup>

5. The effluent currently produced from the A-Plant and K-Plant is rated R-3. The expansion of the A-Plant and the construction of a new K-Plant will result in the production of R-2 rated effluent.<sup>26</sup> WHSC notes that "[t]he extra treatment costs to upgrade to R-1 treatment costs will not be committed unless an agreement with an R-1 user can be executed or the Department of Health otherwise mandates a change."<sup>27</sup> Nonetheless, "[t]he A-Plant ultimate capacity demands are expected to be realized beyond 2012 and the ultimate design is for R-1 effluent treatment."<sup>28</sup>

6. WHSC plans to utilize a line of credit to finance the construction of the new and expanded facilities. WHSC will also attempt to seek financing from its parent and other related companies.<sup>29</sup>

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<sup>25</sup>WHSC's responses to CA-IR-15(c) and CA-SIR-19.

<sup>26</sup>WHSC's response to WML-IR-6(e).

<sup>27</sup>WHSC's response to CA-SIR-7(b); see also WHSC's response to CA-SIR-16.

<sup>28</sup>WHSC's response to CA-SIR-13(b).

<sup>29</sup>WHSC's response to CA-SIR-27(a).



7. The estimated costs to supply the necessary capacity for the anticipated new development up to 2012 are approximately \$27,318,000 (\$24,673,000 in construction costs and \$2,645,000 in net financing charges).

G.

Consumer Advocate's Position

To assess the reasonableness of WHSC's proposed CIAC fee, the Consumer Advocate first examined WHSC's forecasted demand as compared to the capacity and existing demand of its plant facilities in order to determine whether the existing facilities have sufficient capacity to meet the projected demand. In the event that plant expansion is necessary, the Consumer Advocate then reviewed the calculated basis for the proposed CIAC fee to ensure that the fee is fair and reasonable to WHSC's existing and future ratepayers.

In the Consumer Advocate's view, while it appears that the expansion of the capacities of the A-Plant and K-Plant is necessary based on the existing demand of the facilities and near-term projected wastewater flow, it is presently unable to determine the extent of the expansion necessary to serve the forecasted new developments in the area due to uncertainties surrounding the reasonableness of WHSC's wastewater flow projections.

1.

Potential Subsidization of the A-Plant's  
Expansion Costs by Future Customers

The Consumer Advocate contends that: (1) WHSC's calculation of the construction cost of the A-Plant is based on the proposed future total capacity of the plant (0.80 mgd), and not the forecasted wastewater demand of 0.47 mgd from the new developments; and (2) WHSC's proposed CIAC fee, therefore, is based on the cost of the total capacity of the expanded A-Plant, which will serve both existing and future customers. Thus, WHSC's proposal will require future customers to pay for the costs to expand the A-Plant, which will provide wastewater utility service to both new and existing customers.<sup>30</sup> The Consumer Advocate objects as unreasonable any proposal that requires future A-Plant customers to subsidize existing customers.

2.

Projected Demand

The Consumer Advocate expresses its concerns with the inconsistent data utilized by WHSC in calculating the

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<sup>30</sup>By contrast, the Consumer Advocate notes that for the K Plant, WHSC allocated the cost of the facilities associated with the projected wastewater flow caused by the new developments in the years 2006 through 2012:

WHSC Exhibit 2 of the application reflects 370,000 gpd of new wastewater discharge. Costs included for the CIAC fee increase are based on the additional capacity required to accommodate the anticipated new K-Plant customers.

WHSC's response to CA-SIR-5 (emphasis in original).

projected demand for the years 2006 through 2012, which the Consumer Advocate is unable to reconcile. Specifically:

1. For the A-Plant, the number of multi-family residential units identified in WHSC's Exhibit 2 (577 multi-family units, projected wastewater flow of 126,940 gpd) is inconsistent with the number of multi-family residential units identified in the A-Plant Report (1,152 multi-family units, projected wastewater flow of 253,440 gpd), resulting in a difference of 575 multi-family units and a projected wastewater flow of 126,500 gpd.<sup>31</sup>

2. The projected commercial wastewater flow data between WHSC's Exhibit 2 and the A-Plant Report appears inconsistent in that the A-Plant Report forecasts significantly lower commercial wastewater flows (i.e., 88,052 gpd less) than the estimate reflected in WHSC's Exhibit 2.<sup>32</sup> Thus, the projected wastewater demand for commercial developments may be overstated.

3. For the K-Plant, WHSC's Exhibit CA-SIR-11-b reflects a total of 440 multi-family, County of Hawaii residential units to be served by the K-Plant beyond the year 2012, while WHSC's Exhibit 2 reflects 750 multi-family, County of Hawaii residential units forecasted for the years 2006 through 2012, an amount that exceeds the total projected 440 multi-family, County of Hawaii residential units. Thus,

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<sup>31</sup>See Consumer Advocate's Statement of Position, Table 3.

<sup>32</sup>See Consumer Advocate's Statement of Position, Table 4.

the 750 multi-family units figure utilized by WHSC in Exhibit 2 appears overstated.

3.

Unit Construction Cost

The Consumer Advocate expresses its concerns with the unit construction cost data set forth in the A-Plant Report, asserting that WHSC has the burden of explaining how the cost data from the A-Plant Report was utilized to support the unit construction cost data relied upon by the wastewater utility in calculating the proposed CIAC fee.<sup>33</sup> Without an accurate evaluation of the unit cost determination, the Consumer Advocate is unable to determine the reasonableness of the proposed CIAC fee. As part of its overall concerns over the accuracy of WHSC's unit construction cost data, the Consumer Advocate notes that the A-Plant Report includes costs associated with enhancing the treatment of the A-Plant to produce R-1 level effluent, which constitute costs that should not be borne solely by the new developments. In addition, the A-Plant Report "recognizes that there may be significant fluctuations [to] the estimate provided as the contractors' bids may range from \$11,700,000 to \$21,950,000."<sup>34</sup>

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<sup>33</sup>See Consumer Advocate's Statement of Position, Section II(C)(2)(c), Concerns with the unit construction cost, at 17-19.

<sup>34</sup>Consumer Advocate's Statement of Position, at 18 (footnote and citations therein omitted).

4.

Deferred Credits and Associated Interest

Based on WHSC's Exhibit CA-SIR-24, WHSC has collected a significant amount of deferred credits (\$605,760) and imputed interest (\$450,265) from real estate development projects that are not yet completed. These funds, the Consumer Advocate asserts, are not being used to offset the calculation of the proposed CIAC fee. Thus, it recommends that "the amount of CIAC paid for by the new developments that are currently in [WHSC's] deferred credit account and any associated interest should be determined and applied to offset the expansion cost used to determine the proposed CIAC fee."<sup>35</sup> Without this information, the Consumer Advocate is unable to determine the reasonableness of WHSC's proposed CIAC fee.

5.

Recommendation

The Consumer Advocate recommends that the commission deny WHSC's proposal until WHSC addresses the concerns identified by the Consumer Advocate.

H.

Waikoloa Mauka's Position

Similar to the Consumer Advocate, Waikoloa Mauka recommends that the commission deny WHSC's proposal to increase

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<sup>35</sup>Consumer Advocate's Statement of Position, at 20.

its CIAC fee until the wastewater utility provides reliable and sufficient cost support.

1.

Capital Costs Excessive

Waikoloa Mauka contends that WHSC has failed to demonstrate or provide proper justification for its total estimated capital costs of approximately \$27 million. In particular, Waikoloa Mauka asserts:

1. WHSC, in its transmittal, estimated its capital costs at approximately \$27,318,000. However, in its response to CA-IR-15(b), WHSC provided copies of its consultant's report, which included price estimates on three alternative treatment proposals for the construction and equipment costs related solely to the A-Plant expansion. Alternative 3, the alternative recommended by the consultant and apparently selected by WHSC, has an estimated total cost of \$14,630,000.<sup>36</sup>

2. "WHSC's consultant then took the Alternative 3 cost estimate of \$14,630,000 and then added a 50% markup, for a construction cost subtotal of \$21,950,000. No justification or explanation was provided on why a 50% markup was necessary. Added to that were permitting costs of \$219,950, plus change orders of 10%, engineer's design fee of another 10%, and

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<sup>36</sup>WHSC's Exhibit CA-IR-15(b), at 120, 136, and 152.

finally an engineer bidding and construction services fee of 5%. The total, after inclusion of these additional fees, totaled \$27,657,000 for the A-Plant expansion alone."<sup>37</sup>

3. Waikoloa Mauka requested the assistance of Waimea Water Services, Inc. ("WWS"), a Big Island-based company engaged in providing wastewater treatment and consulting services, to review WHSC's CIAC proposal. Based on its review, WWS concluded that WHSC's proposed costs to expand its A-Plant and to build a new K-Plant appear excessive, unreasonably high, and over inflated.<sup>38</sup>

2.

#### Refunds

In the event the commission approves the increase in the CIAC fee requested by WHSC or some other amount, Waikoloa Mauka requests that the commission require WHSC to refund any CIAC fee collected that is in excess of the actual costs incurred by the wastewater utility to upgrade the existing facilities, construct the new facilities, or both.

3.

#### Bifurcation of CIAC Fee

WHSC's proposal contemplates the expansion of its existing A-Plant and the construction of a new K-Plant. Waikoloa Mauka notes that: (1) each plant serves distinct and

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<sup>37</sup>Waikoloa Mauka's Statement of Position, at 3 (citing WHSC's Exhibit CA-IR-15(b), at 78).

<sup>38</sup>See Waikoloa Mauka's Statement of Position, Exhibit A, WWS' Memorandum to Waikoloa Mauka, dated August 24, 2006.

different service areas; and (2) to its knowledge, the service plants are not connected to each other nor are there plans to connect them for redundancy purposes. Thus, Waikoloa Mauka questions the prudence of combining the capital costs of both plants as part of a combined CIAC fee, stating that "a developer whose development will be wholly served by a particular plant obtains no benefit whatsoever from the other plant's infrastructure."<sup>39</sup>

Thus, to the extent that the commission is inclined to grant WHSC's request to increase its CIAC fee, Waikoloa Mauka recommends that the commission consider bifurcating the respective capital costs from each plant and establishing separate CIAC fees for each facility. In this manner, the developer will pay a CIAC fee based solely on the plant facility that will serve the developer's project.

#### I.

##### WHSC's Reply

WHSC counters that its proposal is based on the best available information, and provides a sufficient basis for the commission to approve its request to increase the CIAC fee to \$32.39 per gallon of projected annual average wastewater discharge. Specifically, WHSC contends that: (1) its demand estimates are based on the will serve letters it executed, and

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<sup>39</sup>Waikoloa Mauka's Statement of Position, at 6.



the development timetables and other information provided to WHSC by Waikoloa Village developers; and (2) its construction cost estimates are based on the cost information set forth in the A-Plant Report.

1.

Projected Demand

WHSC counters that it did not rely on inconsistent data in calculating the projected demand for the years 2006 through 2012. Noting that the alleged discrepancies referred to by the Consumer Advocate primarily relate to the multi-family and commercial properties now owned by Waikoloa Mauka, WHSC states that Waikoloa Mauka did not object to the development estimates and timetables used in WHSC's transmittal. In connection thereto, WHSC explains that: (1) the A-Plant Report was prepared by Brown and Caldwell before Waikoloa Mauka purchased the unimproved land; and (2) Brown and Caldwell "used generally accepted estimates of usage per acre for commercial developments and the maximum density for multi-family properties based on existing zoning[.]"<sup>40</sup> By contrast, WHSC filed its transmittal after Waikoloa Mauka purchased the unimproved land, and the usage estimates set forth therein are based on the scope of the proposed developments set forth in the will serve letters

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<sup>40</sup>WHSC's Statement of Position, at 10.

provided to Waikoloa Mauka, and in the development timetable submitted by Waikoloa Mauka. In short, WHSC states that the usage estimates in its transmittal are based on updated, more recent information.

2.

Construction Cost Estimates

WHSC contends that its construction cost estimates are based on the A-Plant Report prepared by Brown and Caldwell. For the A-Plant, the total estimated project cost of \$14,880,000 for 800,000 gpd of wastewater treatment capacity yields a total per gallon project cost of \$18.60 gpd of wastewater treatment capacity. WHSC explains that the A-Plant Report examined five different treatment alternatives, and included a detailed cost analysis of three different plant scenarios. "In sum, the \$18.60 per gallon total project used in WHSC's application is squarely within the per-gallon cost range for all of the alternatives estimated by Brown and Caldwell."<sup>41</sup>

By contrast, WHSC asserts that: (1) the Consumer Advocate did not provide any expert testimony to rebut WHSC's construction cost estimates; and (2) Waikoloa Mauka's expert opinion, consisting of WWS' Memorandum, is inadmissible as expert testimony and lacks credibility.<sup>42</sup> By comparison,

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<sup>41</sup>WHSC's Statement of Position, at 6 (emphasis in original).

<sup>42</sup>WHSC notes that WWS relies on the project costs of thirteen mainland projects, including several package plants with low front-end costs and minimal useful service lives. WHSC also provides a written rebuttal to WWS' Memorandum, from Brown and Caldwell. See WHSC's Statement of Position, Exhibit 17.

construction costs on the island of Hawaii are high, and a more appropriate cost comparison is the final total project cost of \$15.9 million for the new R-1 wastewater treatment facility (130,000 gpd capacity) built in 1999 - 2000 at the Kona International Airport at Keahole, island of Hawaii, approximately twenty-five miles from Waikoloa Village.<sup>43</sup>

WHSC further asserts that its allocation of the full cost of the A-Plant to the developers that created the need to build the new plant, i.e., allocating the total cost of the A-Plant to the new developments, is appropriate. In WHSC's view, "[i]f not for the thousands of new units planned by these developers, there would have been no need to construct a new plant."<sup>44</sup>

### 3.

#### Alternative Calculations

WHSC concludes that: (1) if its CIAC fee is not promptly increased to an amount sufficient to allow WHSC to recover most or all of the costs for the new wastewater treatment facilities, WHSC has no other resources to fund the construction of the two new plants; (2) without the construction of new or expanded wastewater treatment facilities, WHSC will have no additional capacity to accept new customers after December 2007,

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<sup>43</sup>WHSC's Statement of Position, Exhibits 12, 13, and 14.

<sup>44</sup>WHSC's Statement of Position, at 12.

and the development of the new residences in and around Waikoloa Village will come to a halt; and (3) its cost estimates are not excessive.

That said, WHSC presents two alternative CIAC fee calculations for the commission's consideration in order to accommodate the Consumer Advocate's overall concerns.

WHSC's first alternative calculation, Alternative 1:

1. Reduces the capacity increase requested for the A-Plant from 800,000 gpd to 470,000 gpd, to accommodate the Consumer Advocate's concern that the cost of the A-Plant should not be allocated solely to the new developers;
2. Reduces the cost of the A-Plant capacity expansion by \$1,026,038 for the cost of the upgrade from R-2 to R-1 effluent quality, to accommodate the Consumer Advocate's concern that the cost of upgrading treatment levels to R-1 should not be borne by the new developers; and
3. Adds \$1,559,000 in CIAC collections for the amount of deferred CIAC funds, including interest, currently held by WHSC, to accommodate the Consumer Advocate's request that such funds be included in the calculations.<sup>45</sup>

With these adjustments, WHSC calculates the proposed CIAC fee as \$20.70 per gallon of EDSD.<sup>46</sup>

WHSC's second alternative calculation, Alternative 2, includes the same adjustments as Alternative 1, but also increases the number of projected multi-family units from 425 to 886, to accommodate the Consumer Advocate's concern that these additional multi-family units should be included in the calculation. The net effect increases the total number of

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<sup>45</sup>See WHSC's Exhibit CA-SIR-24.

<sup>46</sup>See WHSC's Statement of Position, at 13 n.2, and Exhibit 15.

projected new dwelling units to 3,113 through 2012, and increases the A-Plant demand from 470,000 gpd to approximately 580,000 gpd over the same period.

With these adjustments, WHSC calculates the proposed CIAC fee as \$20.95 per gallon of EDSD.<sup>47</sup>

## II.

### Discussion

This Decision and Order addresses whether WHSC's proposed tariff change to increase its CIAC fee is just and reasonable.

#### A.

##### Non-Submittal of Certain Information

WHSC, as part of its transmittal, requests that the commission accept the wastewater utility's unaudited financial statements (WHSC's Exhibit 10) in lieu of the audited financial statements otherwise required by HAR § 6-61-75(b)(1). In support of its request, WHSC states that "it is a small utility with annual revenues [of] less than \$2,000,000, and does not have audited annual financial reports. Preparation of an audited financial report for this Application would unjustly impose additional financial burdens on WHSC and unnecessarily delay the filing."<sup>48</sup> Based on WHSC's representations,

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<sup>47</sup>See WHSC's Statement of Position, at 14 n.3, and Exhibit 16.

<sup>48</sup>Transmittal No. 06-01, at 6.

the commission, on its own motion, determines that WHSC should not be required to submit the information set forth in HAR § 6-61-75(b)(1).<sup>49</sup>

B.

Proposed Increase in WHSC's CIAC Fee

HRS § 269-16 states in pertinent part:

**Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any

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<sup>49</sup>See In re Kauai Island Util. Coop., Docket No. 2008-0068, Decision and Order, filed on August 26, 2008 (based on the electric utility's representations, the commission, on its own motion, determined that the utility should not be required to submit the information set forth in HAR § 6-61-101(b)(5) to (7)).

rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;
- (2) After a hearing by order:
  - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable;  
.....
- (3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the utility actually used or useful for public utility purposes.

HRS § 269-16(a) and (b) (emphasis added).

HRS § 269-12(b) provides in respective part:

**Notices. . . .**

(b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commission and keeping it open for public inspection.

HRS § 269-12(b).

Under WHSC Rule XI(7), WHSC must calculate the CIAC fee on the basis of its estimate of: (1) the outflow from the customer's premises in the case of new facilities; or (2) the increase in outflow from the customer's premises in the case of substantially modified facilities.

To accommodate the projected growth and increase in demand from 2006 through 2012 in WHSC's service area, WHSC proposes to collect from developers and expend approximately \$27,318,000 to expand the A-Plant and replace the K-Plant in order to increase the capacity of WHSC's wastewater treatment facilities by 0.84 mgd. The A-Plant, moreover, will treat the sewage generated from Waikoloa Mauka's proposed multi-family units and commercial developments, which was the subject of will serve letters previously issued by WHSC.<sup>50</sup> The K-Plant, by contrast, will include the treatment of sewage generated from the County's Workforce Housing Project.<sup>51</sup>

WHSC represents that: (1) its projected wastewater flows are based on the updated, best available information from developers, including Waikoloa Mauka; and (2) its construction cost estimates are based on the A-Plant Report prepared by Brown and Caldwell. In addition, WHSC proposes two alternative CIAC fee calculations for the commission's review and consideration, Alternatives 1 and 2.

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<sup>50</sup>WHSC's Exhibit 1; and WHSC's response to WML-IR-5(b).

<sup>51</sup>WHSC's Exhibit 1; and WHSC's response to CA-SIR-20.



Upon review, WHSC's Alternative 1 methodology appears to represent a useful starting point for calculating WHSC's new CIAC fee,<sup>52</sup> subject to the following considerations:

1. The estimated construction cost for the A-Plant expansion is \$14,630,000, plus a fifty percent mark-up of \$7,320,000 for a construction cost subtotal estimate of \$21,950,000 (excluding permitting/certification costs (one percent), change orders (ten percent), an engineering design fee (ten percent), and an engineering bidding and construction services fee (five percent)).<sup>53</sup> In the commission's view, the docket record does not adequately support or justify the fifty percent mark-up.<sup>54</sup>

2. The preliminary engineering report for the K-Plant has not been completed.<sup>55</sup> The costs for the K-Plant should be based on Brown and Caldwell's engineering report for the K-Plant,

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<sup>52</sup>WHSC's Statement of Position, at 12-13. The calculations for WHSC's Alternative 2 are unclear. WHSC's Statement of Position, at 13-14.

<sup>53</sup>WHSC's Exhibit CA-IR-15(b), at 77-78 (the A-Plant Report).

<sup>54</sup>In this regard, the A-Plant Report states:

With the recent dramatic rise in construction costs due to the high construction demand, escalating steel and fuel costs, housing market boom, limited contractors, and low unemployment, a (+)50 percent increase over the construction cost estimate is assumed for budgetary purposes.

WHSC's Exhibit CA-IR-15(b), at 78 (the A-Plant Report).

<sup>55</sup>WHSC's responses to CA-IR-15(b) and CA-SIR-3(a). According to WHSC, "[t]he K-Plant design and construction will begin as soon as the initial CIAC payment is received for the County of Hawaii Workforce Housing Project." WHSC's response to CA-SIR-3(a).

with any mark-ups in the estimated construction costs for the K-Plant amply supported by the record.

3. For WHSC's Alternative 1, updating the amount of imputed interest for Adjustment No. 3.<sup>56</sup>

4. WHSC should consider establishing separate CIAC fees for the A-Plant and K-Plant, respectively, based on the respective costs of each plant.<sup>57</sup>

5. WHSC should consider the feasibility of adopting language in its CIAC tariff rule that, under one or both of the following options: (A) provides the developer with the option of constructing and dedicating the completed additional facilities to the wastewater utility, at the developer's cost and in accordance with the wastewater utility's specifications; or (B) requires the applicant to pay for the actual cost of constructing the completed additional facilities, with subsequent dedication to the wastewater utility.<sup>58</sup> These options will minimize the need for WHSC having to seek the commission's approval in the future to once again amend its CIAC fee "to better match CIAC collections on a prospective basis with the remaining project costs that have not yet been collected[,]"

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<sup>56</sup>By its Adjustment No. 3, WHSC proposes to add "\$1,559,000 in CIAC collections for the amount of deferred CIAC funds (including interest) currently held by WHSC, to accommodate the CA's request that such funds be included in the calculations." WHSC's Statement of Position, at 13.

<sup>57</sup>Waikoloa Mauka's Statement of Position, at 5-7.

<sup>58</sup>See In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co. and Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 05-0288; Kaupulehu Waste Water Co., Rule XXIII.6, Construction of Facilities by Consumer; and Waimea Wastewater Co., Inc., Rule XI.10, Contribution in Aid of Construction (construction and dedication of facilities by applicant).

in the event that the project's recorded costs significantly deviates from the forecasted costs.<sup>59</sup>

Finally, WHSC is urged to meet with the other parties for the purpose of jointly developing any new transmittals that propose to change WHSC's CIAC tariff rule, before such a transmittal is filed with the commission.<sup>60</sup>

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. WHSC's transmittal, filed on March 21, 2006, is denied without prejudice.

2. WHSC shall serve a copy of any new transmittal filed to amend its CIAC tariff rule upon counsel of record for Waikoloa Mauka, in addition to the Consumer Advocate.

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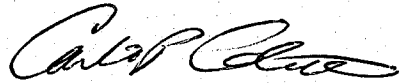
<sup>59</sup>See WHSC's response to CA-SIR-4.d.1. According to WHSC, "[a] decision to modify the CIAC tariff would be based on the same factors that have prompted this application, i.e., existing capacity, anticipated additional demands, and the cost of the expanded plant, and available resources." WHSC's response to CA-SIR-(4)(d)(2).

<sup>60</sup>See Docket No. 05-0288.

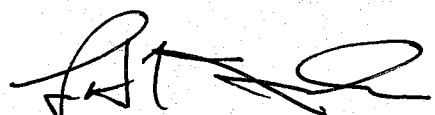
DONE at Honolulu, Hawaii

DEC 23 2008


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

05-0329.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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